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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

RIVAL WATER WELL SPECIALTY et. al,

Plaintiffs and Appellants,

v.

THAN LONG HUA, as Trustee, etc.,

Defendant and Appellant.

G043911

(Super. Ct. No. 30-2008-00105226)

O P I N I O N

Appeals from a judgment of the Superior Court of Orange County, David T. McEachen, Judge. Affirmed.

Mahaffey & Assoc., Douglas L. Mahaffey and Susan B. Ghormley for Plaintiffs and Appellants.

Viken K. Pakradouni for Defendant and Appellant.

* * *

Defendant Than Long Hua, as Trustee for the Hua Trust PT, appeals from a judgment in favor of plaintiffs Rival Water Well Specialty (Specialty) and Rival Well Services, Inc. (Services) in the sum of $112,052 for services performed to reabandon (cap) a nonproducing oil well owned by defendant. He appeals on numerous grounds, many of which challenge plaintiffs' contractors licensing, including failure to allege or prove a license and lack of a proper license. He also claims he was not permitted to question a witness about licensing and the court erred when it allowed addition of a second plaintiff right before voir dire.

Plaintiffs appeal, arguing the court erroneously denied their motion to amend the complaint to add a cause of action for promissory fraud to conform to proof.

Finding no error, we affirm.

FACTS AND PROCEDURAL HISTORY

In 2007, Specialty was a general partnership providing services necessary to abandon or reabandon nonproducing oil wells. The relevant principals were Bobby Grayson, Sr. (Senior), and his son, Bobby Grayson, Jr. (Junior). In June 2007 Senior and Junior formed Services, a corporation. The two plaintiffs worked from the same office and used each other's documents. Senior and Junior thought of Specialty and Services as the same company.

In February 2007 Specialty sent a proposal to defendant to perform the work to reabandon defendant's well for an estimate cost of $66,550, which could go up or down, depending on what was found once work commenced. Defendant agreed to have the work done within a few weeks and the permit was issued in March. Work began in October, after defendant removed a house located on the property. The work was completed and defendant was billed a total of $112,052, which he failed to pay.

Plaintiffs sued defendant for breach of contract and on several common counts. The jury awarded plaintiffs the full amount sought plus prejudgment interest. The court denied defendant's motions for nonsuit, judgment notwithstanding the verdict (JNOV), and new trial.

Additional facts are set out in the discussion.

DISCUSSION

1. Defendant's Appeal

a. Challenges to Licensing

1) Failure to Allege Licensing in the Complaint

Business and Professions Code section 7031, subdivision (a) (all further statutory references are to this code unless otherwise stated) requires that a contractor suing to recover money for services rendered must allege that it was licensed "at all times during the performance of that act or contract . . . ." Defendant argues plaintiffs are barred from recovery because they did not plead in the complaint that they were duly licensed. Although plaintiffs did not allege licensing, the parties litigated the issue. Any error in failing to allege the license does not make the judgment reversible. (*Jackson v. Pancake* (1968) 266 Cal.App.2d 307, 312; *Priebe v. Sinclair* (1949) 90 Cal.App.2d 79, 87.)

2) No Verified Certificate of Licensure

Section 7031, subdivision (d) declares that "[i]f licensure or proper licensure is controverted, then proof of licensure . . . shall be made by production of a verified certificate of licensure from the Contractors' State License Board which establishes that the individual or entity bringing the action was duly licensed in the proper classification of contractors at all times during the performance of any act or contract

covered by the action." The party challenging licensing is not required to offer such a certificate; rather the burden of proof is on the contractor. (*Ibid*.)

Plaintiffs did not proffer certified copies of their licenses but instead obtained copies of certificates from the licensing board, apparently from its website. Defendant stipulated those certificates, along with several other documents, could be admitted as exhibits. The certificates showed Specialty held general engineering (class A) and water well drilling (class C57) licenses as a partnership from the period February 23, 1995 through February 28, 2009, during the time the work was performed. Services held a general engineering license from July 31, 2007 with an expiration date of July 31, 2011, also during the period work was done.

After plaintiffs rested, defendant made a motion for nonsuit on several grounds, including failure to produce a certified copy of the licenses. The court denied the motion.

Defendant argues that by failing to introduce certified copies of the licenses, plaintiffs did not meet their burden of proof. We are not persuaded.

"The purpose of the licensing law is to protect the public from incompetence and dishonesty in those who provide building and construction services. [Citation.] The licensing requirements provide minimal assurance that all persons offering such services in California have the requisite skill and character, understand applicable local laws and codes, and know the rudiments of administering a contracting business. [Citations.]" (*Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 995; see *Buzgheia v. Leasco Sierra Grove* (1997) 60 Cal.App.4th 374, 391 ["it is true the license requirement implicates the public policy to deter unlawful contracting. But the mode of proof of a license is not a matter implicating that public policy, it is a matter of procedural convenience"], italics omitted.)

The requirement of a verified certificate is an evidentiary requirement for authenticating the document. By stipulating to admit the two certificates plaintiffs

produced, defendant, in effect, agreed the documents were authentic. The only reason to admit certificates of licensure is to prove licensing during the relevant period; otherwise the documents would be irrelevant. The stipulation to admit the documents waived the requirement for verified copies.

Defendant maintains the certificates that were admitted do not necessarily contain the same information that would be shown on a verified copy. But counsel at oral argument acknowledged he had no idea what a verified copy would contain, having never seen one. Further, with the stipulation, defendant waived this argument.

Defendant argues he stipulated to admission only so he could question plaintiffs about lack of proper licensing. But the record does not reflect any limitation on his stipulation.

Based on the stipulation, we need not address defendant's claim plaintiffs were required to submit instructions so the jury could find they were properly licensed, eliminating our reliance on a jury finding of licensure.

3) Work Performed by Services Prior to Licensing

Defendant asserts that, although Services was not licensed until July 2007, it did the work, even though Specialty may have sent the invoices. Defendant lists several documents and points to various testimony in support of the argument. Plaintiffs dispute it. There was conflicting evidence at trial. For example, the heading on the February 2007 proposal showed Rival Well Services. Defendant argues this means Services made the proposal. But there was evidence in the form of a declaration filed by Junior that Rival Well Services was a dba of Specialty that had been adopted because Rival Water Well Specialty was "not a real good sounding name to work in the oil fields." (*Ball v. Steadfast-BLK* (2011) 196 Cal.App.4th 694, 702 [statute does not bar recovery by contractor who uses different name from that shown on license].) Further, the license number shown on the proposal was Specialty's.

Defendant also argues Junior and Senior both testified Services performed the work. This is not exactly correct. During cross-examination defendant's counsel tried to have both of them admit Services, not Specialty, had done the work. When asking Junior about who had entered into the contract, Junior testified that "[a]ccording to the paperwork, it says 'Rival Well Services'" and "[a]pparently Rival Well Services." But Junior denied Rival Well Services was the "actual contractor." And he later testified the proposal did not bear the name Rival Well Services, Inc.

Senior had gone to inspect the property in May or June 2007. When defendant's lawyer asked which company he was representing, Senior testified, "to me it didn't really matter. But from your standpoint, probably Rival Well Service rather that Rival Water Well." This could be considered damning or ambiguous.

But the jury had the right to believe Specialty was the contractor and we do not reweigh the evidence or determine credibility. (*Steele v. Youthful Offender Parole Bd.* (2008) 162 Cal.App.4th 1241, 1251-1252.) And we view the facts most favorably in support of the jury's verdict. (*Brennan v. Townsend & O'Leary Enterprises, Inc.* (2011) 199 Cal.App.4th 1336, 1340.)

Defendant argues plaintiffs performed some acts under the contract before Services was licensed, including obtaining the permit and preparing a notice of intention to abandon the well. But there was evidence in the record, in the form of the invoice, that the first act performed was in October 2007, after Services was licensed. That there was contrary testimony, again, falls within the province of the jury to decide. Further, the invoice bears the name Specialty, which was licensed, making this argument irrelevant.

Defendant points to the judgment entered in favor of both plaintiffs, maintaining that because Services performed work before it was licensed, it is not entitled to recover. We have resolved that claim, however. We also note that the total judgment is $112,052 plus prejudgment interest and costs. The plaintiffs are not each entitled to recover that amount.

4) Loss of Specialty's Licensed Partner

Section 7076, subdivision (c) provides that a partnership's license is "canceled upon the disassociation of a general partner . . . ." Subdivision (b) states that the license is canceled when a general partner dies. In both instances the surviving general partner must apply for a new license. In the JNOV motion defendant raised for the first time the argument Specialty's license had been cancelled because a former partner, Duard Loveless, had died in 2006. On appeal, he broadens his argument, relying on Senior's testimony that he and Junior alone began operating Specialty in September 2006.

This argument does not persuade. First, although Senior did state Loveless had died, he gave no date. The trial court may grant a motion for JNOV "'only if it appears from the evidence, viewed in the light most favorable to the party securing the verdict, that there is no substantial evidence in support.' [Citations.]" (*Wolf v. Walt Disney Pictures and Television* (2008) 162 Cal.App.4th 1107, 1138.) Any inferences are to be drawn in plaintiffs' favor. (*Hauter v. Zogarts* (1975) 14 Cal.3d 104, 110.) Thus we cannot infer, as defendant would have us, that Loveless died in 2006 based on Senior's testimony about when he and Junior became partners.

Over defendant's objection the trial court allowed plaintiffs to file a declaration in opposition to the motion that stated Loveless died in 2008 and his license was good until then. On appeal, defendant's only challenge to admission of this evidence was in a footnote, which we are not required to consider. (*People v. Crosswhite* (2002) 101 Cal.App.4th 494, 502, fn. 5.)

Moreover, the certificate of license in evidence shows the partnership was licensed for the entire period. Although this might be considered a conflict in plaintiffs' evidence, on a motion for JNOV such an inconsistency does not defeat the judgment as long as there is sufficient evidence supporting the judgment, as is the case here. (*Hale v.*

Farmers Ins. Exchange (1974) 42 Cal.App.3d 681, 692, disapproved on another ground in *Egan v. Mutual of Omaha Ins. Co.* (1979) 24 Cal.3d 809, 822, fn. 5.)

5) Requirement of Specialized License

Defendant maintains a specialized license for drilling and oil field work was required and neither plaintiff had it. "Limited specialty is a specialty contractor classification limited to a field and scope of operations of specialty contracting for which an applicant is qualified other than any of the specialty contractor classifications listed and defined in this article." (Cal. Code Regs., tit. 16, § 832.61, subd. (a).) This argument is flawed.

Under section 7056 pertaining to a general engineering contractor's license, activities included within the license include "pipelines and other systems for the transmission of petroleum and other liquid or gaseous substances," and "land leveling and earthmoving projects . . . ." As shown by the certificates obtained from the website, both plaintiffs had this Class A license.

Further, defendant fails to cite to any regulation requiring or even discussing a D09 license. The record contains a document defendant apparently retrieved from the Contractors State License Board describing a drilling contractor. But that document merely describes a "Classification"; it does not refer to a specialized license.

In addition, California Code of Regulations, title 16, section 830, subdivision (b), on which defendant relies, only states that contractors shall be licensed as Class A or Class B contractors and cannot contract outside either license. (*See Pacific Caisson & Shoring, Inc. v. Bernards Bros. Inc.* (2011) 198 Cal.App.4th 681, 690 [contractor with Class A license not required to also have specialty license]; *Ron Yates Construction Co. v. Superior Court* (1986) 186 Cal.App.3d 337, 346, 348 [where contractor possessed Class A license, which requires "specialized engineering knowledge and skill, including [specified subjects]," Class B license not required].)

6) Joint Venture License

Defendant's next claim is that plaintiffs were required to obtain a joint venture license. He makes little argument, other than stating the evidence reflects plaintiffs were "operating a joint venture" and section 7029.1 prohibits two licensed contractors being "awarded a contract jointly or otherwise act[ing] as a contractor" unless they obtained a joint venture license. This argument is not well developed and could be considered waived. (*Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862.) In addition, the record is not as clear as defendant may think.

Defendant acknowledges that section 7031, subdivision (a), which bars unlicensed contractors from recovering sums due, does not apply to licensed contractors who fail to obtain a joint venture license. He argues this does not apply based on his claims that Services performed work prior to licensing and that Specialty was unlicensed after Loveless left. We have disposed of these arguments.

7) Loaning of License; Aiding and Abetting Unlicensed Acts

Defendant claims that even if we do not agree Specialty was licensed, it nevertheless is barred from recovering because it "'lent'" its license to Services. He relies on the proposal bearing the name "Rival Well Services" that lists Specialty's license number. But he disregards evidence that Rival Well Services was a dba of Specialty. Moreover he provides no authority that these acts, if proven, would suffice to deny plaintiffs from recovering under the contract. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.)

8) Effect of Licensing of Junior and Senior

Defendant maintains the court relied on individual licenses of Junior and Senior to find plaintiffs had the right to recover. There is no evidence of that in the record reference he cites. Moreover, we do not rely on it in deciding this appeal.

b. Evidentiary Ruling

Defendant complains the court cut off questioning when his lawyer was trying to establish Services had borrowed Specialty's license as shown on the proposal. A review of the testimony shows defendant's lawyer asked several questions during cross-examination before the court sustained an objection. The court did not abuse its broad discretion to control questioning. (*Schimmel v. Levin* (2011) 195 Cal.App.4th 81, 87.)

c. Leave to Amend Complaint

Defendant objects to the court's allowing Specialty to amend its complaint just before trial started to add Services as a plaintiff. It was done, he claims, apparently as a result of its motion in limine to exclude any documents showing Services had done any of the work. This ruling was also within the discretion of the trial judge. (Code Civ. Proc., § 473, subd. (a)(1).) We do not reverse a decision to allow such an amendment absent a showing of abuse of discretion. (*Foxborough v. Van Atta* (1994) 26 Cal.App.4th 217, 230.) Defendant has not made such a showing.

2. Plaintiffs' Appeal

A couple of days before the case was sent to the jury plaintiffs filed a motion to amend the complaint to conform to proof to add a cause of action for promissory fraud. At the close of testimony plaintiffs asked for a ruling and the court denied it without explanation. Plaintiffs claim that was an abuse of discretion.

The motion was based on the testimony of defendant, who, plaintiffs claim, never intended to honor the agreement. Plaintiffs dealt with defendant's brother, Josh Hua, as defendant's agent when they entered into the agreement to reabandon the well. In the motion, they argued defendant concealed from Josh that he never intended to

perform the agreement. They assert they did not know of defendant's intent until he testified at trial.

The elements of promissory fraud are a promise to do some act without the intent to perform to induce the other party to rely, justifiable reliance, and damages. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) Plaintiffs' quote some of defendant's trial testimony as support for the cause of action. But a review of the testimony shows that it does not plainly show defendant's intent not to perform is not as clear as plaintiffs make it out to be.

Although the right to amend is construed liberally (*Rainer v. Buena Community Memorial Hosp.* (1971) 18 Cal.App.3d 240, 254), the decision is left to the court's discretion and we do not reverse without a strong showing discretion was abused (*Consolidated World Investments, Inc. v. Lido Preferred Ltd.* (1992) 9 Cal.App.4th 373, 383). Plaintiffs did not make a sufficient showing of abuse of discretion.

DISPOSITION

The judgment is affirmed. The parties shall bear their own costs on appeal.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

ARONSON, J.

IKOLA, J.